

**COLLECTIVE WORK:** A collective work is a work, such as an encyclopedia or anthology, that includes a number of separate smaller works.

**COMPILATION:** A "compilation" is a work formed by collecting preexisting material or facts and selecting or arranging them in an original way. A [Collective Work](#) is a type of compilation.

**COPYRIGHT:** A "copyright" is actually a "bundle of rights" that the creator of a work is entitled to control if the work is "an original work of authorship fixed in a tangible medium of expression." This means that in order to be entitled to copyright protection, the work has to be something you created (and didn't copy from another work) and set down in some physical form, like in writing, on videotape, in a sound recording, in a computer program or on a computer screen. The "bundle of rights" that are included in copyright are the right to: (1) distribute the work, (2) reproduce (or make copies of) the work, (3) display the work (for example, a painting that you want to allow a museum to publicly display), (4) perform the work, and (5) create [Derivative Works](#) based upon the original work. Note that there is an exception to the general rule that the creator of the work owns the copyright in the work - see [Work-for-Hire](#).

**COPYRIGHT HOLDER/COPYRIGHT OWNER:** A "copyright owner" or "copyright holder" is a person or a company who owns any one of the [Exclusive Rights](#) of copyright in a work. Copyright ownership is separate from the ownership of the work itself. For instance, when an artist sells a painting to someone, the artist usually retains the copyright in the painting. That means the buyer of the painting will have it to keep in her house or office but the artist will retain the rights to copy, display and distribute the painting, and make other works based on the painting. Copyrights not only can be sold independent of the work itself, but the different exclusive rights can also be sold separately. For instance, an artist could sell the right to make copies of his artwork to one person and could sell the right to publicly display it to someone else.

**COPYRIGHT NOTICE:** You may have seen on a book the following notice "© [name of copyright owner] [year of creation]" or, in the case of a CD or other [Sound Recording](#), "[name of copyright owner] [year of creation]." These are called copyright notices. Prior to January 1, 1978, if there was a so-called "general [Publication](#)" of a work without a complete copyright notice, the work could immediately become part of the [Public Domain](#). Under the current United States Copyright Act, a copyright notice is no longer required to be placed on a work in order to have copyright protection but many people still use the notice because it lets the world know who the owner of the copyright is and that the work is protected by copyright.

**DERIVATIVE WORK:** A "derivative work" is a work that is "based upon one or more preexisting works." One of the [Exclusive Rights](#) of a [Copyright Owner](#) is to make derivative works. The United States Copyright Act gives many examples of what is a derivative work. One example is a motion picture based upon a book. If you create a derivative work with the [Permission](#) of the owner of the underlying work, you as the author of the derivative work can obtain a copyright covering the original material you contributed.

**EXCLUSIVE RIGHT:** A [Copyright Owner](#) owns all or any one of the "exclusive rights" of copyright in a work. Those rights are listed in Section 106 of the United States Copyright Act and include the right to (1) reproduce the work, (2) prepare [Derivative Works](#) of it, (3) distribute copies of it, (4) perform it publicly and (5) display it publicly.

**EXPRESSION:** The words you use to tell a story, the picture that you paint, and the lyrics to a song you wrote are all types of "expression." Until you set these things down on paper or in a [Recording](#), they are nothing more than ideas. [Ideas](#) in and of themselves are not protectible by copyright, only the way they are expressed is protected. The copyright law protects expression only when it is [Fixed](#) in a way that others can read or see it.

**FAIR USE:** "Fair use" is the right of the public to make reasonable use of copyrighted material in special circumstances without the [Copyright Owner's Permission](#). The United States Copyright Act recognizes that fair use of a copyrighted work may be used "for purposes such as criticism, comment, news reporting, teaching, scholarship, or research." Factors to be considered include (1) the purpose and character of the use, including whether the use is for a commercial purpose or is for non-profit educational purposes; (2) what kind of work is the copyrighted work (for instance, is it creative or factual); (3) the amount and importance of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential commercial market for or value of the copyrighted work. Whether or not a fair use has been made of a copyrighted work is not always easy to determine and there have been many lawsuits to determine whether or not a use is "fair." Where there is doubt about whether something qualifies for the fair use exception, you should request a [License](#) from the [Copyright Holder](#).

Below are some examples of cases involving the defense of fair use:

1. The court held that a book of trivia questions about the "Seinfeld" TV program was not fair use. Although the book was transformative, the TV program was a work of fiction accorded special status under copyright law. The book drew upon essential elements of the TV program, and occupied a market for a derivative work that the [Copyright Holder](#) was entitled to control. [Castle Rock Entertainment v. Carol Pub. Group, Inc.](#), 955 F. Supp. 260 (S.D.N.Y. 1997), aff'd, 150 F.3d 132 (2d Cir. 1998).

2. The court held that the use in a TV biography about Muhammed Ali of up to 14 film clips of historical footage, each between 41 seconds and two minutes long, was likely to be fair use. Ali was a public figure and his TV biography was the subject of public interest. The allegedly [Infringing](#) film clips were not the focus of documentary and were not particularly noticeable, and use of the film clips was not likely to the undercut market for a motion picture. [Monster Communications, Inc. v. Turner Broadcasting System, Inc.](#), 935 F. Supp. 490 (S.D.N.Y. 1996).

3. The court held that a parody of the song "I Love New York" performed in a skit on "Saturday Night Live" poking fun at New York City's public relations campaign and its theme song was a protected fair use. [Elsmere Music, Inc. v. NBC](#), 623 F.2d 252 (2d Cir. 1980).

4. The court held that that use of copyrighted music played during a parade that happened to be televised by ABC was a fair use. [Italian Book Corp. v. ABC, Inc.](#), 458 F. Supp. 65 (S.D.N.Y 1978).

**FIRST SALE DOCTRINE:** The "first sale" doctrine recognizes that ownership of a copyright is different from ownership of a material object that is the subject of a copyright. For example, owning a copy of the book "The Catcher in the Rye" does not mean that you own the copyright in the story. Under the first sale doctrine, the owner of a lawfully-made copy of a copyrighted work may sell, rent or transfer that copy or publicly display that copy without the [Copyright Owner's Permission](#). That means you can buy a book or a videotape and give it to friend or sell it at a yard sale, but you cannot make a copy of that book or videotape and sell or give that copy away. But note that there is an exception to the first sale doctrine for the rental of [Sound Recordings](#) and computer programs. To rent copies of copyrighted sound recordings or computer programs, you must get permission from the copyright owner. A hot issue these days is whether the first sale doctrine should apply at all to the Internet and other digital media where owners of lawfully-made copies of works can transmit copies of those works and still keep their lawfully-made copies.

**FIXATION:** A work is not entitled to copyright protection until it is "fixed in a tangible medium." For example, a song that has been created and even performed but which has never been written out in sheet music or recorded has no copyright.

**IDEA:** Section 102 (b) of the United States Copyright Act states:

*In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which is described, explained, illustrated or embodied in such a work. Ideas, methods, concepts, systems and devices are not entitled to copyright protection.*

This language means that no one can monopolize an idea or subject matter under a claim of copyright. Put another way, copyright law protects the [Expression](#) of an idea but not the idea itself. Can you imagine if the people who were the first to write stories about a girl wanting to play basketball or about a boy and a girl falling in love were able to stop everyone else from writing stories about those subjects? It would make it really hard to create original works and would defeat the purpose of the copyright law, which is to promote the progress of the arts and to secure for the public the benefit of authors' creative activities.

**INFRINGEMENT:** Under Section 501 of the United States Copyright Act, anyone who violates any of the [Exclusive Rights](#) of the [Copyright Owner](#) is a copyright "infringer." To prove copyright infringement, the plaintiff must show (1) that the defendant (the alleged infringer) copied from the original author's (the plaintiff) work, either by actually copying plaintiff's work or by having plaintiff's work in mind when the defendant composed his work, and (2) that, taken together, the elements copied by the defendant amount to "too much" in terms of quantity and importance, and that the audiences for the two works will see the similarities between defendant's work and the protected elements in the plaintiff's work.

**INTELLECTUAL PROPERTY:** The term "Intellectual Property" refers to all kinds of intangible (not physical) types of property that people can own. Unlike physical property, Intellectual Properties are solely creations of law and have no independent existence. Intellectual Property under U.S. law encompasses rights in copyrights, patents, [Trademarks](#), as well as [Trade Secrets](#), [Rights of Publicity](#) and [Moral Rights](#). For more information on Patents and Trademarks follow this link to the website for the [US Patent and Trademark Office](#). Where copyrights and patents are governed solely by federal law in the US, trademarks are governed by both state and federal law, and trade secrets and rights of publicity solely by state law.

**LICENSE:** In order to exercise one or more of the [Exclusive Rights](#) of copyright, you need a "license" from the [Copyright Owner](#). The license is the permission granted by a copyright owner (also know as the "licensor") to the person requesting the right to exercise one or more of these exclusive rights (also know as the "licensee"). For example, if you wanted to create a movie based on a book (which would be a [Derivative Work](#)), you would need a license from the owner of copyright in the book. A license is usually subject to certain restrictions or conditions. For example, the licensor may require the licensee to submit materials for review and approval by the licensor and to make certain payments or [Royalties](#) to the licensor. A license is often limited to a specific time period and often to a specific geographic territory or language. If you wanted to have an exclusive license (you're the only one who could do what you're getting permission to do), the license would have to be in writing. If you simply wanted permission to create the derivative work and didn't care if others could do the same thing (a non-exclusive license), the license would not have to be in writing. But remember, it's always better to get it in writing!

**MASTER USE LICENSE:** A "master use license" is an agreement by which the [Copyright Owner](#) of a [Sound Recording](#) (usually, the record company) grants [Permission](#) to someone else to use the [Sound Recording](#) in a visual work. For example, if a recording is used as background music for a movie or television commercial, the producer will need to get a master use license from the record company (or other copyright owner). Note that the producer also has to get a [Synchronization License](#) from the copyright owner of the song itself (also called the [Musical Composition](#)).

**MECHANICAL LICENSE:** Under the United States Copyright Act, the right to use copyrighted songs in making [Sound Recordings](#) for distribution to the public for private use is one of the [Exclusive Rights](#) of the [Copyright Owner](#). However, the Copyright Act provides that once a copyright owner has recorded and distributed such a work to the public in the United States or permitted someone else to do so, a

"compulsory mechanical license" is available to anyone else who wants to record and distribute the work in the United States. The mechanical license will require that person to pay license fees at the "compulsory" rate set in Section 115 of the Copyright Act. The "compulsory" royalty rate as of January 1, 2000 is \$0.0755 per use for [Musical Compositions](#) that are 5 minutes or less and the rate is \$0.0145 per minute of playing time for compositions over 5 minutes.

**MEDIUM:** A "medium" is a type of artistic technique or means of [Expression](#) related to the materials used or the creative methods involved in the production of the work. The plural form of medium is "media" and paintings, films, books, TV, and the internet are all examples of different media.

**MORAL RIGHTS:** Under U.S. federal law, "moral rights" are certain rights given to artists who have created visual works of art (such as, a painting or sculpture) to protect the integrity of her name and works. The rights are set forth in the Section 106A of the United States Copyright Act. The artist has the right (1) to claim authorship of her work, (2) to prevent others from using her name in connection with a work she did not create or a work that has been distorted or mutilated, and (3) to prevent any intentional distortion, mutilation or destruction of her work.

**MUSICAL COMPOSITION:** A "musical composition" is a musical work, such as a song or piano piece, created by a composer using melody (tones and rhythms), harmony (chords), and lyrics. A musical composition is not in audible form; it is the combined notes and lyrics written on sheet music. A recorded, audible version of a musical composition is a [Sound Recording](#). A musical composition can be very long, like a Beethoven symphony, or can be a single song.

**PARODY:** There is no exact definition for what a "parody" is under the copyright law. A parody involves the use of elements of a previously existing work in a new work that, at least in part, comments on or criticizes the previously existing work and is usually meant to be funny. A parody of a copyrighted work can be a [Fair Use](#). However, just because something is funny (like taking the melody of an existing song and writing funny lyrics to that melody) does not necessarily mean it is a parody.

1. A print advertisement for the movie, "Naked Gun: The Final Insult 33 1/3," featured the body of an eight-month pregnant female model with male star Leslie Nielsen's face. The background, lighting, pose and other features of the movie advertisement were similar to a controversial photograph of the actress, Demi Moore, taken when she was eight months pregnant. Plaintiff, a well known photographer who shot the Demi Moore photograph, sued the movie studio for copyright [Infringement](#). Upon analysis of the [Fair Use](#) factors, the court found that the advertisement was a parody and a fair use of plaintiff's copyrighted photograph. [Leibovitz v. Paramount Pictures Corporation](#), 948 F. Supp. 1214 (S.D.N.Y. 1996), *aff'd*, 137 F.3d 109 (2d Cir. 1998).

2. The rap group, 2 Live Crew, wrote a rap song called "Pretty Woman," which drew heavily on the song "Pretty Woman" written by Roy Orbison, but the 2 Live Crew version used shocking and graphic lyrics instead of the more innocent words of the Orbison song. 2 Live Crew was sued for copyright [Infringement](#) by the [Owner of the Copyright](#) in the Orbison version of the song. Both the original trial court and the United States Supreme Court found that the rap song was a parody and a [Fair Use](#). The United States Supreme Court said that it refused to "indulge a presumption" that all commercial uses of copyrighted works are unfair. [Campbell v. Acuff-Rose](#), 510 US 569, 114 S.Ct. 1164, 127 L.Ed. 2d 500 (1994).

**PATENT:** A "patent" is a type of [Intellectual Property](#) that relates to inventions. Like [Copyright](#), patents give the creators of inventions a certain "bundle of rights," including the exclusive rights to (1) make copies of the invention, (2) use the invention for whatever purposes it was intended, (3) import copies of the invention, (4) sell copies of the invention, and (5) offer copies of the invention for sale, all for up to 20 years. Inventions protected by patents include computer hardware, medicines, hybridized roses, and the design of athletic shoes or a bicycle helmet.

**PERFORMING RIGHTS:** An owner of a copyright has many [Exclusive Rights](#), including the right to perform his or her own song (the [Musical Composition](#)) in public. These rights are known as "performing rights," and other users need [Permission](#) of the [Copyright Owner](#) to play the song on the radio or television, or in clubs, concerts, and amusement parks. Usually, the user is charged a fee called a [Royalty](#). To make this easier, organizations called "performing rights societies" help control and collect the royalties paid for these performances on behalf of the songwriter or other copyright owners. There are 3 main societies in the United States that do this: [ASCAP](#) (American Society of Composers, Authors, and Publishers), [BMI](#) (Broadcast Music Incorporated), and [SESAC](#). Most foreign countries also have organizations that serve the same purpose.

**PERMISSION:** In order to exercise one or more of the [Exclusive Rights](#) of copyright, you need a get permission from the [Copyright Owner](#). That permission is called a [License](#), by which a copyright owner grants the right to exercise one or more of these rights to another person or company. For example, if you wanted to record your own version of a song written by someone else (which would be a [Derivative Work](#)), you would need a license from the owner of copyright in the song to record it.

**PUBLIC DOMAIN:** Works that are in the public domain belong to everyone and can be freely used without compensating the authors. There are many reasons why a work may be in the public domain. For example, works consisting entirely of information that is commonly available and that contain no original authorship are in the public domain. Works that previously were entitled to copyright protection enter the public domain when the [Term](#) of the copyright has expired. Under the 1909 Copyright Act, if a work was published without a [Copyright Notice](#), protection was lost and the work entered the public domain when it was first [Published](#).

**PUBLICATION/PUBLISH:** To "publish" a work means to distribute copies of that work to the public. The act of publishing is referred to as "publication" and sometimes a published work is referred to as the "publication." For example, the publication of a book involves a publisher distributing copies of the book to the public, usually through bookstores and other types of resellers and distributors. A film is published when it is shown in theater or on TV. The [Copyright Owner](#) controls this right to distribute -- or publish -- copies of the work, but typically [Licenses](#) this right of distribution to a publisher. Other examples of publications include newspapers and magazines.

**RIGHT OF PUBLICITY:** The "right of publicity" is a right under state law (as opposed to under federal law like copyright) that every person has the right to control the commercial use of his or her identity. For example, an advertiser may not use a famous person's picture to endorse a product without getting the famous person's permission to do so. The scope of the right of publicity varies from state to state, and some states have held that only celebrities, and not ordinary people, have a right of publicity.

**ROYALTY:** In exchange for a [License](#) to do something with a copyrighted work, the person who wants to use the work (referred to as the "licensee") will usually have to pay a certain amount of money, called a "royalty," to the [Copyright Owner](#) or other person licensing out the work (referred to as the "licensor"). For example, if the author of a book licenses the right to a company to make and sell a software game based on the book, the author may require the company to pay him 15% of the money it receives from sales of the software game.

**SERVICE MARK:** A "service mark" is any word, name, symbol or device used by a person or a company to identify and distinguish its services (as opposed to products, which are covered by [Trademarks](#)) from the services of others in the same business. Titles, character names, and other distinctive features of advertisements (including songs) may be registered as service marks of the person or company who offers the services advertised. For example, McDonald's owns the service mark "We love to see you smile" used in their commercials.

**SOUND RECORDING:** A "sound recording" describes the capturing of a musical performance and its sounds in any format, such as a cassette tape, compact disc (CD), or MP3 file. In copyright law, this is often referred to as the "[Fixation](#)" of sound. Copying a recording, such as making a cassette tape from a friend's CD or burning a CD from another disc, is among the rights covered by copyright law.

**STATUTORY DAMAGES:** A [Copyright Owner](#), who brings a case for the [Infringement](#) of a work that has been registered with the United States Copyright Office, may ask the court for "statutory damages" instead of actual damages and lost profits. The "statutory damages" will be decided by the court but must be between \$200 - \$150,000 for all infringements of each work. The amount the court will award will depend, in part, on whether the infringer knew he or she was infringing the copyrighted work.

**SYNCHRONIZATION LICENSE:** A "synchronization license" is an agreement by which the [Copyright Owner](#) of [Musical Composition](#) allows its use in a visual work. For example, a song is used as background music for a movie or a television commercial. Note that, when a [License](#) is obtained to use a [Sound Recording](#) of a song, it is called a [Master Use License](#).

**TERM:** Copyright protection does not last forever. A copyright has a "term" or length, depending on when the work itself was created. For works created after January 1, 1978, the term of copyright is the life of the author plus 70 years or, if the work is a [Work-for-Hire](#), the term is 95 years from first [Publication](#) or 120 years from creation, whichever expires first. For works published or registered prior to January 1978, the term of copyright is 95 years.

**TITLE:** Generally the title of a literary work or of a song is not entitled to copyright protection. However, some courts are recognizing that a well-known title may deserve protection under other theories such as [Trademark](#) or unfair competition where the title has become well-known and there is a strong connection with a certain product or company in the mind of the public (such as "Gone With The Wind").

**TRADEMARK:** A "trademark" is any word, name, symbol or device used by a person or a company to identify and distinguish its products (as opposed to services, which are covered by [Service Marks](#)) from the products of others in the same business. Titles, character names, and other distinctive features of advertisements (including songs) may be registered as trademarks of the person or company who offers the products advertised. For example, the shape of the Coca-Cola bottle and the Nike swoosh are both trademarks.

**TRADE SECRET:** A "trade secret" is any piece of information which a person or company uses in its business and protects as secret. Trade secrets give businesses a competitive edge and if its competitors had access to the information, such access would harm the trade secret owner's business. State law prevents others from taking and using trade secrets. For instance, the recipe for making Coke has been kept as a trade secret by the Coca-Cola Company for almost a century. If it didn't keep the recipe secret, others could make Coke too and the Coca-Cola Company would lose a lot of sales.

**WORK-FOR-HIRE:** A "work for-hire" is either (1) a work prepared by an employee as part of her work, in which case the employer owns the copyright in the work, or (2) a work specially commissioned or ordered as a contribution to a [Collective Work](#) or [Compilation](#), in which case the person or company commissioning or ordering the work owns the copyright in the work.